IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

M/s.P.N.& Company Vs. Deputy Commissioner of Income Tax & Another
(SB Civil Writ Petition No.5183/1999)

SB Civil Writ Petition under Articles
226 & 227 of the Constitution of India.

Date of order: November 15, 2006.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. G.S. Bapna, for the petitioner.

Mr. J.K.Singhi] for the respondents.
Mr. Anuroop Singhi]

BY THE COURT:

The petitioner has approached this Court with the following prayer: -

(i) to quash the notice under section 148 of the Income Tax Act,1961 (for short `The Act') dated April 26, 1999.

(ii) to restrain the respondents from re-assessment in respect of Assessment year 1992-93.

2. Contextual facts depict that the petitioner is a registered partnership firm carrying on business of Finance Brokerage and the firm is an assessee since 1988-89. The petitioner submitted return for the assessment year 1992-93. Return was scrutinised under section 143(3) of the Act and assessment order came to be passed. Business and residential premises were searched under section 132 of the Act. After considering books of accounts and incriminating papers, the Assessing Officer assessed the income of the petitioner. One of the partner of petitioner Prakash Narain Gattani submitted return for the assessment year 1992-93 in his individual

capacity. Assessing Officer assessed the income of Prakash Narain Gattani, who filed appeal against the assessment order before the Commissioner Income Tax (Appeal) Rajasthan-I Jaipur. The appeal was decided on January 20, 1999 with the following directions:-

> "... Therefore the addition of Rs.14,80,000/- for advance and addition of Rs.32,585/- for interest on these advances are hereby deleted. The AO is directed to consider the additions to be made on the basis of this paper in the hands of M/s.P.N. &Co."

Thereafter the Assessing Officer issued notice to petitioner under Sections 147 and 148 of the Act on April 26, 1999. The petitioner gave reply to notice on May 7, 1999 stating therein that the notice was without jurisdiction. It was also contended that notice was bad since it was issued on the directions of CIT Appeals. The petitioner further stated that there was no concealment on the part of the petitioner.

3. A preliminary objection was raised on behalf of the respondents in regard to maintainability of the petition.

4. I have heard the rival submissions.

5. In Calcutta Discount Co.Ltd. Vs. Income Tax Officer, (AIR 1961 SC 372) their Lordships of the Supreme Court considered the question of jurisdiction of Assessing Officer and indicated as under:-

> "5. The only point raised before us is that the court court below were wrong in holding that the first ground that the notices were issued without the existence of the necessary conditions precedent which confers jurisdiction under S.34 had not been made out. As it is no longer disputed that S.34 as amended in 1948 applies to the present case we have to consider the section as it stood after the amendment in 1948, in deciding this

question of jurisdiction. The relevant portion of the section was in these words:

34.Income escaping assessment (1) if- * * *

6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under-assessed. The second is that he must have also reason to believe that such "under assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under S.22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material fact necessary for his assessment for that year. Both these conditions are condition precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond the period of four years but within the period of eight years, from the end of the year in question."

6. In Udaipur Mineral Development Syndicate Pvt. Ltd. Vs. Assistant Commissioner of Income-Tax (2004 Income Tax Reports Vol.269 page 270) Division Bench of this Court held as under:-

"Dismissing the appeal, that sanction for notice under section 148 of the Income-tax Act,1961 had been granted by the Additional Commissioner. The Additional Commissioner was the officer superior in the hierarchy to the Joint Commissioner in the Department. Certainly, the superior officer in the hierarchy was competent to grant sanction for issuance of the notices to the assessee under section 148. It was clear from the findings of the single judge that it could not be said that the notice was ex-facie a nullity or totally without jurisdiction. The alternative remedy of filing of the objections against show cause notice available to the appellant had been availed of. The notice could not be quashed."

7. In Rajan Products Vs. Union of India (Vol.247 ITR (2001) 101) the Division Bench of this Court observed as under:-

> "(i) that the Income-tax officer had reason to believe that income had escaped assessment and that he could exercise his jurisdiction under section 147 of the Income-tax Act,1961. The assessee had no legal right to ask for the reasons for issuance of notice under section 147.
> (ii) that the assessee had an alternative remedy of filing appeal before the appropriate authority provided under the Income-tax Act,1961 and no cause of action had arisen for the assessee for filing a writ petition and further appeal. The assessee's legal objections would not be affected if reply to the notice under section 147 along with the return were furnished. On receipt of the reply to the show-cause notice issued under section 147, the Income-tax Officer should decide the objections filed legally and factually and then pass final orders in accordance with law after affording an opportunity of hearing either to the assessee or its authorised representative within three months from the date of filing objections regarding the reassessment proceedings."

8. In GKN Driveshafts (India) Ltd. Vs. Income-tax Officer (2003 (259) ITR 19, Hon'ble Supreme Court held that High Court will not issue writ to quash the notice. It was indicated as under:-

> "When a notice under section 148 of the Income-tax Act,1961, is issued, the proper course of action for the noticee is to file the return and, if he so desires, to seek reasons for issuing the notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.
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> On receiving notices under section 148 the appellant filed the returns. The appellant also received notices under section 143(2) calling for further information on certain points in connection with the returns. Thereupon the appellant filed

> writ petitions challenging the notices. The High Court dismissed the writ petitions holding that the petitions were premature and the appellant could raise its objections to the notices by filing reply to the notices before the Assessing Officer. The appellant preferred appeals and the Supreme Court dismissed the appeals, observing that since the reasons for reopening of assessments under section 148 had been disclosed in respect of five assessment years, the Assessing Officer had to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessments for those years."

9. Coming to the facts of the instant case as already noticed the petitioner has submitted to the jurisdiction of the Assessing Officer and the Assessing Officer has furnished the reasons to the petitioner as required by it. Therefore the proper course for the petitioner would be to exhaust the remedy availed by it. After submitting to the jurisdiction of the Assessing Officer, the petitioner cannot be permitted to invoke the writ jurisdiction. In my opinion the writ petition is pre mature and no interference under Article 226/ 227 of the Constitution of India is called for at this stage.

10. Resultantly the writ petition stands dismissed as not maintainable. No costs.

(Shiv Kumar Sharma),J.

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